

Aditya Cements Ltd. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-28-2005

Judge : M Ravindran

Appellant : Aditya Cements Ltd.

Respondent : C.C.E.

Judgement :

1. The appellant has preferred this appeal against the order-in-Appeal dt. 13.5.03 wherein the Modvat credit availed on lubricating oil and greases used at mining area is denied.
2. Relevant facts of the case for consideration are that the appellant has availed credit of Modvat on inputs. The said inputs were utilized by them in the mining area adjacent to their factory. A SCN was issued to the appellant for demand of the credit utilized in the inputs used in the mining area as the mining area is not considered as factory. On adjudication the demand was confirmed and penalty was imposed. The appellate authority also concerned with the view of the adjudicating authority and upheld the order-in-original hence this appeal.
3. The Ld. Advocate submits that the show cause notice issued in this case is for extended period and is not tenable as this SCN is issued after on an identical issue, in respect of the same items another SCN was issued and adjudicated. He submits that the ground plan of the appellant very clearly shows that the mining area of the appellant is adjacent to the factory and separated only by a common

road, hence it can be said that the inputs were used in the factory.

4. Ld. DR. on the other hand submits that the violation of provisions were noticed by the department on 22.4.99 and the SCN was issued on 3.4.01. This may be due to the investigation being in progress. He further submits the subsequent SCN was issued for the same items to cover a period within the provisions of Section 11A, He submits that mining area being adjacent does not mean a factory.

5. Considered the submissions made by both sides and perused the initiated by SCN dt.3.4.01. The period covered in the SCN is from April 97 to March 99 and sought reversal of Modvat credit as inputs used in mining area. The SCN came to be issued based on the visit of the Revenue Officers on 2.2.4.99 to the factory of the appellant. Another SCN was issued by the Range Officer on 7.10.99, for seeking to reverse the credit on the identical inputs used in the mining area. The said SCN dt.7.10.99 was adjudicated by the adjudicating authority vide order-in-original No. 18/2000-CE(Dem) dt.31.1.2000. The authorities issued a show cause notice on the identical allegations, on the same inputs and also confirmed the demand for the period April 99 to June 99 before the issuance of the SCN dt.3.4.01 which is in dispute before me.

The department was aware of the issue when the SCN dated 7.10.99 was issued, but did not take enough precaution to issue a SCN for the extended period at that time itself. Issuing a SCN for extended period i.e. from April 97 to March 99 after adjudication as identical issue would be gross violation of the settled law. *ECE Industries v. CCE New Delhi Demand and penalty - Limitation - Extended period of limitation, not invocable in subsequent proceedings when earlier proceedings on same subject matter pending/decided* Suppression or misstatement Second show cause notice alleging suppression - Earlier show cause notice for demand of duty and imposition of penalty for wrong availment of Modvat and its non-reversal adjudicated Extended period of limitation not invocable for willful suppression or misstatement in the second show cause notice No penalty imposable Section 11A of Central Excise Act, 1944.

7. The issue in this case is squarely covered by the Hon'ble Supreme Court decision.

8. In view of the above, I find than the order-in-Appeal. dt., 13.5.03 deserves to be set aside. The impugned order is set aside and appeal allowed.

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